

SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair)	1. SOLICITATION NO. IBM09B0004	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 08/18/2009	RATING
	IMPORTANT -The "offer" section on the reverse must be fully completed by offeror.			
4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO. See Lines		6. PROJECT NO.	
7. ISSUED BY International Boundary and Water Commission (IBWC) USIBWC - ACQUISITIONS DIV 4171 NORTH MESA, STE. C100 EL PASO, TX 79902-1441		8. ADDRESS OFFER TO International Boundary and Water Commission (IBWC) USIBWC - ACQUISITIONS DIV 4171 NORTH MESA, STE. C100 EL PASO, TX 79902-1441		
9. FOR INFORMATION EMAIL:	a. NAME Colleen Elliott	b. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)		c. EMAIL elliottc@state.gov

SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" means "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date)

Lower Rio Grande Flood Control Project - Interior Floodways

Rehabilitation of North Floodway 1 and Arroyo Colorado Floodways 1 and 2,
From FM 1015 to South White Ranch Road, Hidalgo and Cameron Counties, Texas

Furnish all labor, materials and equipment for the construction of the improvements on the North Floodway 1, Arroyo Colorado 1 and Optional Arroyo Colorado 2 Floodways.

The estimated price range is between \$10,000,000.00 and \$50,000,000.00.

American Recovery Act Funded

11. The Contractor shall begin performance within ___10___ calendar days and complete it within ___330___ calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory <input type="checkbox"/> negotiable. (See See F.2 in Section F..)	
12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12b). <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12b. CALENDAR DAYS 10
13. ADDITIONAL SOLICITATION REQUIREMENTS	
a. Sealed offers in original and ___1___ copies to perform the work required are due at the place specified in item 8 by ___16:00:00___ (hour) local time ___09/18/2009___ (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.	
b. An offer guarantee <input checked="" type="checkbox"/> is, <input type="checkbox"/> is not required.	
c. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.	
d. Offers providing less than ___120___ calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.	

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)		15. TELEPHONE NO. (Include area code)	
CONTACT: _____ DUNS: _____ CODE _____ FACILITY CODE _____		16. REMITTANCE ADDRESS (Include only if different than Item 14.)	

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within ____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13d. Failure to insert any number means the offeror accepts the minimum in Item 13d.)

AMOUNTS

18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGMENT OF AMENDMENTS*(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)*

AMENDMENT NO.										
DATE										

20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER
(Type or print)

20b. SIGNATURE

20c. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN
(4 copies unless otherwise specified)

ITEM
7 & 9

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO
☐ 10 U.S.C. 2304(c) () ☐ 41 U.S.C. 253(c) ()

26. ADMINISTERED BY CODE IBWC_
International Boundary and Water Commission (IBWC)
USIBWC - ACQUISITIONS DIV
4171 NORTH MESA, STE. C100
EL PASO, TX 79902-1441

27. PAYMENT WILL BE MADE BY
International Boundary and Water Commission (IBWC)
USIBWC - FINANCIAL SERVICES DIV
4171 NORTH MESA, STE. C100
EL PASO, TX 79902-1441

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return ____ copies to issuing office) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30a. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN
(Type or print)

31a. NAME OF CONTRACTING OFFICER (Type or print)
Colleen Elliott

30b. SIGNATURE

30c. DATE

31b. UNITED STATES OF AMERICA

31c. DATE

BY

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Line Item Summary	Solicitation Number: IBM09B0004	Contract Number:	Title: RECOVERY - Construct N FW 1, AC 1 & 2 Levee Improv		Date of Solicitation: 08/18/2009
Line Item No.	Description	Quantity	Unit	Unit Price	Total Cost
	North FW Levee (NF 1), FM 1015 - Baseline Rd, contract line item numbers 001 - 046. Arroyo Colorado N Levee (AC 1), FM 1015 - Willacy Canal, CLINs 047 - 070. Arroyo Colorado N Levee (AC 2), Willacy Canal - White Ranch Rd [Optional], CLINs 071 - 086.				
001	SPECIFICATION 01 57 01 Temp Erosion Control (Silt Fence) Doc Ref No: 93094201393A Delivery Date FOB: Destination	88,134.00	LF		
002	SPECIFICATION 01 57 02 Temp Erosion Control (CONST Exit) Doc Ref No: 93094201393A Delivery Date FOB: Destination	2,700.00	SY		
003	SPECIFICATION 01 70 01 Mobilization/Demobilization Doc Ref No: 93094201393A Delivery Date FOB: Destination	1.00	LS		
004	SPECIFICATION 02 91 10 Remove/Relocate Fence Doc Ref No: 93094201393A Delivery Date FOB: Destination	2,170.00	LF		
005	SPECIFICATION 31 11 10 Prep Right of Way Note:Actual unit description is "STA" for station; however, for this bid schedule "EA" for each is used to mean the same unit. Doc Ref No: 93094201393A Delivery Date FOB: Destination	439.00	EA		
006	SPECIFICATION 31 14 01 Remove/Stockpile (Exist Gravel) NOTE: CD is defined as 'Cubic Yard' throughout the bid schedule. Doc Ref No: 93094201393A Delivery Date FOB: Destination	7,420.00	CD		
007	SPECIFICATION 31 14 02 Remove/Stockpile (Exist Topsoil) (6IN) Doc Ref No: 93094201393A Delivery Date FOB: Destination	47,166.00	CD		
008	SPECIFICATION 31 92 01 Seeding (Perm) Doc Ref No: 93094201393A Delivery Date FOB: Destination	272,957.00	SY		
009	SPECIFICATION 31 92 02 Vegetative Watering	842.00	EA		

Line Item Summary		Solicitation Number: IBM09B0004	Contract Number:	Title: RECOVERY - Construct N FW 1, AC 1 & 2 Levee Improv		Date of Solicitation: 08/18/2009	
Line Item No.	Description			Quantity	Unit	Unit Price	Total Cost
	NOTE: Actual unit description is "MG" for one thousand gallon (1,000); however for this bid schedule "EA" for each is used to mean the same unit. Doc Ref No: 93094201393A Delivery Date FOB: Destination						
010	SPECIFICATION 31 92 03 Seeding (Temp) Doc Ref No: 93094201393A Delivery Date FOB: Destination			148,665.00	SY		
011	SPECIFICATION 35 41 01 Raise Levee (Bench Excavation) Doc Ref No: 93094201393A Delivery Date FOB: Destination			130,745.00	CD		
012	SPECIFICATION 35 41 02 Raise Levee (Embankment) Doc Ref No: 93094201393A Delivery Date FOB: Destination			306,685.00	CD		
013	SPECIFICATION 35 41 03 Raise Levee (TopSoil) Doc Ref No: 93094201393A Delivery Date FOB: Destination			45,311.00	CD		
014	SPECIFICATION 50 11 02 Roadway Embank (Access Road) Doc Ref No: 93094201393A Delivery Date FOB: Destination			41,823.00	CD		
015	SPECIFICATION 50 20 01 Roadway Flexbase (TY E GR 4) Doc Ref No: 93094201393A Delivery Date FOB: Destination			15,045.00	CD		
016	SPECIFICATION 50 21 01 Prime Oil (MC-30) Doc Ref No: 93094201393A Delivery Date FOB: Destination			75.00	GL		
017	SPECIFICATION 50 25 01 Hot Mix ASPH SURF (2 IN) Doc Ref No: 93094201393A Delivery Date FOB: Destination			116.00	TN		
018	SPECIFICATION 50 40 01 Metal Beam Guard Fence (TIMBER POST) Doc Ref No: 93094201393A Delivery Date FOB: Destination			400.00	LF		
019	SPECIFICATION 60 23 01 Retaining Wall			2,939.00	SF		

Line Item Summary		Solicitation Number: IBM09B0004	Contract Number:	Title: RECOVERY - Construct N FW 1, AC 1 & 2 Levee Improv		Date of Solicitation: 08/18/2009	
Line Item No.	Description			Quantity	Unit	Unit Price	Total Cost
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
020	SPECIFICATION 60 34 01 Roadway Approach slab			224.00	CD		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
021	SPECIFICATION 60 64 10 RC Pipe (CL III) (18 IN)			8.00	LF		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
022	SPECIFICATION 60 64 18 RC Pipe (CI V) (18 IN)			32.00	LF		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
023	SPECIFICATION 60 64 20 RC Pipe (CI V) (24 IN)			17.00	LF		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
024	SPECIFICATION 60 65 20 Gatewell (ADJ) (4x4 W/O Platform)			21.00	EA		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
025	SPECIFICATION 60 65 21 Gatewell (ADJ) (6x4 W/O Platform)			1.00	EA		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
026	SPECIFICATION 60 65 30 Gatewell (ADJ) (4x3 W/ Platform)			1.00	EA		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
027	SPECIFICATION 60 65 31 Gatewell (ADJ) (5.5x4 W/ Platform)			1.00	EA		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
028	SPECIFICATION 60 65 32 Gatewell (ADJ) (10x5 W/ Platform)			1.00	EA		
	Doc Ref No: 93094201393A Delivery Date FOB: Destination						
029	SPECIFICATION 60 65 33 Gatewell (ADJ) (6x4 W/ Platform)			1.00	EA		
	Doc Ref No: 93094201393A Delivery Date FOB:						

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Line Item No.	Description	Quantity	Unit	Unit Price	Total Cost
	Destination				
030	SPECIFICATION 60 65 34 Gatewell (ADJ) (4x4 W/ Platform) Doc Ref No: 93094201393A Delivery Date FOB: Destination	1.00	EA		
031	SPECIFICATION 60 65 40 Inlet (COMPL) (TY H) Doc Ref No: 93094201393A Delivery Date FOB: Destination	1.00	EA		
032	SPECIFICATION 60 66 40 CONC HDWLL (Raise) Doc Ref No: 93094201393A Delivery Date FOB: Destination	3.00	EA		
033	SPECIFICATION 60 67 01 Slope End Treat (18 IN) Doc Ref No: 93094201393A Delivery Date FOB: Destination	6.00	EA		
034	SPECIFICATION 60 67 02 Slope End Treat (24 IN) Doc Ref No: 93094201393A Delivery Date FOB: Destination	3.00	EA		
035	SPECIFICATION 60 68 21 Sluice Gate (REFURB) (18 IN) Doc Ref No: 93094201393A Delivery Date FOB: Destination	1.00	EA		
036	SPECIFICATION 60 68 23 Sluice Gate (REFURB) (24 IN) Doc Ref No: 93094201393A Delivery Date FOB: Destination	2.00	EA		
037	SPECIFICATION 60 68 25 Sluice Gate (REFURB) (4FT x 4FT) Doc Ref No: 93094201393A Delivery Date FOB: Destination	1.00	EA		
038	SPECIFICATION 60 68 37 Sluice Gate Parts (Handwheel) (18-24 IN) Doc Ref No: 93094201393A Delivery Date FOB: Destination	2.00	EA		
039	SPECIFICATION 60 68 61 Sluice Gate Parts (Thrust Collar) (18-24 IN) Doc Ref No: 93094201393A Delivery Date FOB: Destination	1.00	EA		
040	SPECIFICATION 60 68 90 Sluice Gate (LUBE)	1.00	EA		

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	Doc Ref No: 93094201393A Delivery Date FOB: Destination				
041	SPECIFICATION 60 71 10 Gatewell Grate (Repalce &/OR Install) Doc Ref No: 93094201393A Delivery Date FOB: Destination	29.00	EA		
042	SPECIFICATION 60 80 06 Floodgate (Automatic) (4' x 100') Doc Ref No: 93094201393A Delivery Date FOB: Destination	1.00	EA		
043	SPECIFICATION 60 80 07 Floodgate (Automatic) (4' x 150') Doc Ref No: 93094201393A Delivery Date FOB: Destination	1.00	EA		
044	SPECIFICATION 60 80 10 Floodgate (Manual) (5' x 24') Doc Ref No: 93094201393A Delivery Date FOB: Destination	2.00	EA		
045	SPECIFICATION 60 98 10 Clean Exist Structure Doc Ref No: 93094201393A Delivery Date FOB: Destination	29.00	EA		
046	SPECIFICATION 90 79 01 Vehicular Gate Doc Ref No: 93094201393A Delivery Date FOB: Destination	16.00	EA		
047	SPECIFICATION 01 57 01 Temp Erosion Control (Silt Fence) Doc Ref No: 93094201394A Delivery Date FOB: Destination	17,014.00	LF		
048	SPECIFICATION 01 70 01 Mobilization/Demobilization Doc Ref No: 93094201394A Delivery Date FOB: Destination	1.00	LS		
049	SPECIFICATION 31 11 10 Prep Right of way NOTE: Actual unit description is "STA" for station; however, for this bid schedule "EA" for each is used to mean the same unit. Doc Ref No: 93094201394A Delivery Date FOB: Destination	37.00	EA		
050	SPECIFICATION 31 11 11 Clearing, Grubbing, & Stripping	11.53	EA		

Line Item Summary		Solicitation Number: IBM09B0004	Contract Number:	Title: RECOVERY - Construct N FW 1, AC 1 & 2 Levee Improv		Date of Solicitation: 08/18/2009	
Line Item No.	Description	Quantity	Unit	Unit Price	Total Cost		
	NOTE: Actual unit description is "AC" for Acre; however, for this bid schedule "EA" for each is used to mean the same unit. Doc Ref No: 93094201394A Delivery Date FOB: Destination						
051	SPECIFICATION 31 14 01 Remove/Stockpile (Exist Gravel) NOTE: CD is deifined as 'Cubic Yard' throughout the bid schedule. Doc Ref No: 93094201394A Delivery Date FOB: Destination	1,054.00	CD				
052	SPECIFICATION 31 14 02 Remove/ Stockpile (Exist Topsoil) (6 IN) Doc Ref No: 93094201394A Delivery Date FOB: Destination	12,027.00	CD				
053	SPECIFICATION 31 92 01 Seeding (PERM) Doc Ref No: 93094201394A Delivery Date FOB: Destination	21,589.00	SY				
054	SPECIFICATION 31 92 02 Vegetative Watering NOTE: Actual unit description is "MG" for one thousand (1,000); however, for this bid schedule "EA" for each is used to mean the same unit Doc Ref No: 93094201394A Delivery Date FOB: Destination	44.00	EA				
055	SPECIFICATION 31 92 03 Seeding (TEMP) Doc Ref No: 93094201394A Delivery Date FOB: Destination	21,589.00	SY				
056	SPECIFICATION 35 41 01 Raise Levee (Bench Excavation) Doc Ref No: 93094201394A Delivery Date FOB: Destination	33,288.00	CD				
057	SPECIFICATION 35 41 02 Raise Levee (Embankment) Doc Ref No: 93094201394A Delivery Date FOB: Destination	48,509.00	CD				
058	SPECIFICATION 35 41 03 Raise Levee (Topsoil) Doc Ref No: 93094201394A Delivery Date FOB: Destination	11,070.00	CD				

Line Item Summary	Solicitation Number: IBM09B0004	Contract Number:	Title: RECOVERY - Construct N FW 1, AC 1 & 2 Levee Improv		Date of Solicitation: 08/18/2009
Line Item No.	Description	Quantity	Unit	Unit Price	Total Cost
059	SPECIFICATION 35 42 02 RIPRAP (Rock) Doc Ref No: 93094201394A Delivery Date FOB: Destination	562.00	CD		
060	SPECIFICATION 35 42 03 GEOTEXTILE fabric Doc Ref No: 93094201394A Delivery Date FOB: Destination	843.00	SY		
061	SPECIFICATION 50 11 02 Roadway Embankment (Access Road) Doc Ref No: 93094201394A Delivery Date FOB: Destination	7,411.00	CD		
062	SPECIFICATION 50 20 01 Roadway Flexbase (TY E GR 4) Doc Ref No: 93094201394A Delivery Date FOB: Destination	2,370.00	CD		
063	SPECIFICATION 60 64 10 RC Pipe (CL III) (18 IN) Doc Ref No: 93094201394A Delivery Date FOB: Destination	34.00	LF		
064	SPECIFICATION 60 67 01 Slope End Treat (18 IN) Doc Ref No: 93094201394A Delivery Date FOB: Destination	1.00	EA		
065	SPECIFICATION 60 68 21 Sluice gate (REFURB) (18 IN) Doc Ref No: 93094201394A Delivery Date FOB: Destination	1.00	EA		
066	SPECIFICATION 60 68 23 Sluice gate (REFURB) (24 IN) Doc Ref No: 93094201394A Delivery Date FOB: Destination	2.00	EA		
067	SPECIFICATION 60 68 90 Sluice gate (LUBE) Doc Ref No: 93094201394A Delivery Date FOB: Destination	1.00	EA		
068	SPECIFICATION 60 71 10 Gatewell Grate (Replace &/OR Install) Doc Ref No: 93094201394A Delivery Date FOB: Destination	3.00	EA		
069	SPECIFICATION 60 98 00 Clean Exist Structure Doc Ref No: 93094201394A Delivery Date FOB: Destination	7.00	EA		

Line Item Summary	Solicitation Number: IBM09B0004	Contract Number:	Title: RECOVERY - Construct N FW 1, AC 1 & 2 Levee Improv		Date of Solicitation: 08/18/2009
Line Item No.	Description	Quantity	Unit	Unit Price	Total Cost
070	SPECIFICATION 90 79 01 Vehicular Gate Doc Ref No: 93094201394A Delivery Date FOB: Destination	1.00	EA		
071	SPECIFICATION 01 57 01 Temp Erosion Control (SILT FENCE) Doc Ref No: 93094201395A Delivery Date FOB: Destination	9,264.00	LF		
072	SPECIFICATION 01 70 01 Mobilization/Demobilization Doc Ref No: 93094201395A Delivery Date FOB: Destination	1.00	LS		
073	SPECIFICATION 31 11 10 Prep Right of Way NOTE: Actual unit description is "STA" for station; however, for this bid schedule "EA" for each is used to mean the same unit. Doc Ref No: 93094201395A Delivery Date FOB: Destination	20.00	EA		
074	SPECIFICATION 31 11 11 Clearing, Grubbing, & Stripping NOTE: Actual unit description is "AC" for Acre; however, for this bid schedule "EA" for each is used to mean the same unit. Doc Ref No: 93094201395A Delivery Date FOB: Destination	5.00	EA		
075	SPECIFICATION 31 14 02 Remove/Stockpile (Exist Topsoil) (6 IN) NOTE: CD is defined as 'Cubic Yard' throughout the bid schedule. Doc Ref No: 93094201395A Delivery Date FOB: Destination	1,098.00	CD		
076	SPECIFICATION 31 15 01 Land Smoothing Doc Ref No: 93094201395A Delivery Date FOB: Destination	1.33	EA		
077	SPECIFICATION 31 92 01 Seeding (PERM) Doc Ref No: 93094201395A Delivery Date FOB: Destination	30,036.00	SY		
078	SPECIFICATION 31 92 02 Vegetative Watering NOTE: Actual unit of description is "MG" for one thousand (1,000); however, for this bid schedule "EA" for each is used to mean the same unit.	60.00	EA		

Line Item Summary	Solicitation Number: IBM09B0004	Contract Number:	Title: RECOVERY - Construct N FW 1, AC 1 & 2 Levee Improv			Date of Solicitation: 08/18/2009
Line Item No.	Description	Quantity	Unit	Unit Price	Total Cost	
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					
079	SPECIFICATION 35 41 02 Raise Levee (Embankment)	4,854.00	CD			
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					
080	SPECIFICATION 35 41 03 Raise Levee (Topsoil)	754.00	CD			
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					
081	SPECIFICATION 35 42 02 RIPRAP (ROCK)	15.00	CD			
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					
082	SPECIFICATION 50 11 02 Roadway Embankment (Access Road)	507.00	CD			
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					
083	SPECIFICATION 50 20 01 Roadway Flexbase (TY E GR 4)	566.00	CD			
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					
084	SPECIFICATION 60 67 01 Slope End Treat (18 IN)	1.00	EA			
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					
085	SPECIFICATION 60 68 37 Sluice Gate Parts (Handwheel) (18-24 IN)	1.00	EA			
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					
086	SPECIFICATION 60 98 10 Clean Exist Structure	5.00	EA			
	Doc Ref No: 93094201395A Delivery Date FOB: Destination					

B.1 52.211-18 Variation in Estimated Quantity (Apr 1984)

04/01/1984

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days

from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

B.2 Taxes -- IBWC (May 2009)

05/01/2009

In accordance with FAR clause 52.229-3, incorporated by reference at I.1 in Section I, prices set forth herein shall include all applicable federal, state and local taxes.

Section C - Descriptions/Specifications/Statement of Work

C.1 Specifications and Plans

08/17/2009

Refer to Section J, List of Documents, Exhibits and Other Attachments, Items J.12 and J.13. The technical specifications and plans are for the Lower Rio Grande Flood Control Project, Interior Floodways - Rehabilitation of North Floodway and Arroyo Colorado Floodways 1 and 2, from FM 1015 to South White Ranch Road, Hidalgo and Cameron Counties, Texas.

Section D - Packaging and Marking

D.1 This Section is not used.

08/17/2009

Section E - Inspection and Acceptance

Clauses By Reference

Clause	Title	Date
52.246-12	Inspection of Construction (Aug 1996)	08/01/1996

E.1 52.252-02 Clauses Incorporated by Reference (Feb 1998) 02/01/1998

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://www.arnet.gov/far>

Section F - Deliveries or Performance

Clauses By Reference

Clause	Title	Date
52.242-14	Suspension of Work (Apr 1984)	04/01/1984

F.1 52.252-02 Clauses Incorporated by Reference (Feb 1998) 02/01/1998

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://www.arnet.gov/far>

F.2 52.211-10 Commencement, Prosecution, and Completion of Work (Apr 1984) 04/01/1984

The Contractor shall be required to (a) commence work under this contract within *ten (10) calendar days* after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than *three hundred and thirty (330) calendar days after the date the contractor receives the notice to proceed*. **Note:** *The flood control levee improvemensts, excluding seeding and maintenance of vegation, shall be completed two hundred and ten (210) calendar days after contractor receipt of notice to proceed.* The time stated for completion shall include final cleanup of the premises.

F.3 Actual Damages -- Construction 08/17/2009

If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay actual damages to the Government for each calendar day of delay until the work is completed or accepted.

If the Government terminates the Contractor's right to proceed, actual damages will continue to accrue until the work is completed. These actual damages are in addition to excess costs of repurchase under the Termination clause.

To the maximum extend permitted by law, the actual damages incurred by IBWC, due to the fault or negligence of the contractor, will not exceed the total amount of the contract.

Section G - Contract Administration Data

G.1 Contracting Officer -- IBWC (May 2009) 05/01/2009

"Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer within the limits of their authority as delegated by the Contracting Officer.

G.2 Designation of Contracting Officer -- IBWC (May 2009) 05/01/2009

The Contracting Officer for this contract is:

Name: Colleen Jaye Elliott
Address: International Boundary & Water Commission,
United States & Mexico (USIBWC)
4171 N Mesa, Suite C-100
El Paso, TX 79902-1441
Telephone: (915) 832-4714
Fax: (915) 832-4192
e-Mail: colleenelliott@ibwc.state.gov

G.3 Contracting Officer's Representative -- IBWC (May 2009) 05/01/2009

The Contracting Officer shall designate a technical representative to act for the Contracting Officer during the contract period. The Contracting Officer's Representative (COR) will act for the Contracting Officer only in technical matters and will not be authorized to commit the Government on any contract terms, conditions, or changes in unit price, total contract price, quantity, or quality, or delivery schedule. Any changes to the contract in unit price, total contract price, quantity, quality, or delivery schedule will be made only by the Contracting Officer by executed modification to the contract. The Contracting Officer's Representative will be located at the USIBWC Field Office, 325 Golf Course Road, Mercedes, TX 78570.

G.4 Contractor's Contract Administrator -- IBWC (May 2009) 05/01/2009

Offeror is requested to delegate a person to be contacted for prompt contract administration.

Name: _____
Address: _____

Telephone: _____
Fax: _____
Cell: _____
e-Mail: _____

The Contracting Officer for this contract is:

Name: Colleen Jaye Elliott
Address: International Boundary & Water Commission, United States & Mexico
US Section (USIBWC), Acquisition Division (ACQ)
4171 N Mesa, Suite C-100
El Paso, TX 79902-1441
Telephone: (915) 832-4714
Fax: (915) 832-4192
e-Mail: colleenelliott@ibwc.state.gov

Section H - Special Contract Requirements

H.1 52.236-04 Physical Data (Apr 1984)

04/01/1984

6Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by visual survey, and the associated geotechnical data and reports identified in the Specifications, Division 00 Procurement and Contracting Requirements, Section 00.31.32 Geotechnical Data.

(b) Weather conditions as reported by <http://www.weather.com> on the Internet as follows:

Mercedes, Texas

Phenomenon	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Ave High (F)	69	73	80	85	89	93	95	96	92	86	78	71
Ave Low (F)	51	51	57	64	70	73	74	74	71	64	56	50
Ave Precip	1.40	1.40	1.00	1.40	2.70	2.90	2.20	2.60	4.70	2.50	1.30	1.20

(c) Transportation facilities: **Access to the project site is unrestricted.**

(d) **The existing condition of the levee is addressed under Available Information, in the Specifications, Division 00, Procurement and Contracting Requirements, Section 00.31.19 Existing Condition Information and Section 00.31.50 Other Project Information.**

H.2 Performance and Payment Bonds -- IBWC (May 2009)

05/01/2009

(a) **For contracts that exceed \$100,000**, the Contractor shall, within ten (10) calendar days after award of contract, furnish to the Government bonds as follows:

(1) **Performance bond.** Performance bond with a surety or sureties approved by the Contracting Officer, securing performance and fulfillment of the Contractor's obligations under this contract, with a penal amount of not less than 100 percent of the price of the contract at the time of award.

(2) **Payment bond.** Within ten (10) calendar days after award of contract, furnish to the Government a payment bond with a surety or sureties approved by the Contracting Officer, assuring payment as required by law to all persons supplying labor or materials in the prosecution of the work provided for in the contract with a penal amount of not less than 100 percent of the price of the contract at the time of award.

(b) **Costs.** All costs of furnishing performance and payment bonds shall be included in the total lump sum bid in the schedule.

(c) **Requirements for execution of surety bonds.** Each surety company bond (performance or payment), that purports to have been executed by an agent or attorney in fact for the corporate surety, is required to have submitted with it a power of attorney to the signatory agency or attorney in fact, and (1) be executed by the corporate surety upon a date reasonably proximate to the date of the bond, or (2) the power of attorney shall be accompanied by a certification of the surety to the effect that the power of attorney was in full force and effect upon a date reasonable proximate to the date of the bond.

(d) **Individual Sureties.**

(1) If individual surety bonds are furnished for payment and performance bonds, the individual sureties must submit with their bonds proof of ownership and value of the assets which they claim in their net worth. The Government's preferred method of proof is to have a statement of net worth prepared by a certified public accountant in accordance with generally accepted accounting principles. The statement of net worth on the SF 28, Affidavit of Individual Surety, is not in itself sufficient and will not be accepted absent of additional proof of value and ownership.

(2) Bidders are also cautioned that individual sureties must provide complete and detailed information in block 10 of the SF 28 concerning other contracts on which they have provided bonds. This information should include contract number, contract location, amount and type of bond and telephone number of the involved contracting officer.

(3) Failure to provide the proof and information requested above will cause delays to the start of construction for which the contractor must bear the responsibility, and may result in termination of contract for failure to provide adequate bonds.

H.3 Compensation and Liability Insurance -- IBWC (May 2009)

05/01/2009

The Contractor shall within ten (10) calendar days after award of contract provide and maintain minimum insurance as follows:

(a) **General Liability Insurance** for bodily injury and property damage with minimum limits \$500,000 each occurrence with an aggregate of \$1,000,000.

(b) **Automobile Liability** for bodily injury and property damage with minimum of \$250,000 for injury to or death of any one (1) person, \$500,000 each accident or occurrence for bodily injury, and \$100,000 for each accident or occurrence for property damage liability.

(c) **Worker's Compensation Insurance** for all labor employed on the project who may come within the protection of workers' compensation laws and Employers General Liability with minimum limits of \$100,000 each accident, bodily injury by disease \$100,000 each employee, \$500,000 aggregate.

In every case the insurance coverage shall amount to at least the limits stated above. However, where the Financial Responsibility Compulsory Insurance Law of the State in which the project is located requires higher limits, the Automobile Liability Insurance Policy shall provide coverage of at least those limits required by State law.

(d) **Railroad Insurance:** See specifications 00 31 51 for insurance and coordination requirements for work in the vicinity of the railroad.

The insurance obtained by the Contractor must (1) be effective for the term of the contract and (2) must name both the United States of America by and through the United States Section of the International Boundary and Water Commission, United States and Mexico, as additionally insured. The requirement for naming the United States of America as an additional insured does not apply to Worker's Compensation Insurance.

Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer. The Contractor's written certification shall be accompanied by either a Certificate issued by the insurer or photocopies of the insurance policies which reflect that the cancellation/change provisions of this contract have been met.

The Contractor shall insert the substance of this clause including this paragraph in subparagraphs under this contract and shall require subcontractors to provide and maintain the same limits.

At least five days prior to each such subcontractor's personnel commencing work on this project, the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current Certificate

of Insurance meeting the requirements as stated above.

H.4 Builders Risk Insurance -- IWC (May 2009)

05/01/2009

(a) The Contractor is responsible for losses suffered prior to Government acceptance of the work. Therefore, the Contractor is responsible for protection of the work and repair of damages. For the protection of the Contractor and the Government, the Contractor is required to obtain Builder's Risk Insurance with the maximum level of coverage available in the project locality and no less than 100% of the contract price.

(b) The Contractor shall not commence work under this contract until he has obtained all the insurance required and such insurance has been approved by the Contracting Officer, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

(c) The Contractor shall procure within ten (10) calendar days after award of contract, and maintain during the life of this contract, Builder's Risk Insurance based on 100 percent (100%) of the completed value of the insurable portion of the project.

(d) The Contractor shall furnish the Contracting Officer with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by the Contracting Officer."

(e) The insurance obtained by the Contractor must (1) be effective for the term of the contract and (2) must name the United States of America by and through the United States Section of the International Boundary and Water Commission, United States and Mexico, as an additional insured.

H.5 Brand Name or Equal -- IBWC (May 2009)

05/01/2009

(As used in this clause, the term "brand name" includes identification of products by manufacturer, make, and/or model.)

If items called for by this Invitation for Bids have been identified in the specifications by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory (Reference Section I, FAR Clause 52.236-05 entitled Material and Workmanship). The determination as to equality of a product shall be the responsibility of the Government and will be based on information furnished during the submittal process (**Reference Specifications, Division 01 General Requirements, Section 01 33 00 Submittals**).

H.6 Technical Data Submittal Requirements -- IBWC (May 2009)

05/01/2009

(a) Technical data required to be provided to the government are described in the paragraph entitled "Submittal Requirements" in the Specifications, **Division 01 General Requirements, Section 01 33 00 Submittals**.

(b) If the Contractor fails to provide required technical data within the time(s) specified in this contract, or any extension, such failures shall be considered to demonstrate unsatisfactory progress and:

(1) There shall be retained from the progress or other payments under this contract such amount(s) as the Contracting Officer considers adequate protection to the Government therefore.

(2) The Contractor and its sureties shall be liable to and assessed by the Government for all damages caused by such failure.

(3) The Contractor's right to proceed with the work that has been delayed may be terminated for default.

(c) In the event the Contractor provides submittals prior to Notice to Proceed, the Government may review the submittals prior to the Notice to Proceed. The Contractor shall not seek compensation for efforts spent on the preparation of submittal documents submitted prior to the Notice to Proceed.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(e) The Government will expedite the review of submittals. However, for specific submittals the Government will require up to the amount of time specified in **Section 01 33 00** for review of submittals or re-submittals.

H.7 Accident Prevention and Pre-Planning -- IBWC (May 2009)

05/01/2009

With reference to the requirements of FAR clause 52.236-13 (Alternate I) for an overall safety program, the Contractor will:

- (a) Submit a detailed plan for performing each major phase of work.
- (b) Require Subcontractors to submit their plan of operations showing methods they propose to use in accomplishing major phases of work.
- (c) Be prepared to discuss the plans in conferences convened by the Contracting Officer prior to starting work on each major phase of work.

Plans will include all pertinent information, such as methods of providing safety measures for personnel performing required work. The plan for accomplishing work will be submitted prior to commencing operations.

H.8 Construction Program -- IBWC (May 2009)

05/01/2009

(a) The Contractor shall submit a schedule of construction in accordance with the requirements set forth in **the Specifications, Division 01 General Requirements, Section 01 32 00 Construction Progress Documentation**. The Contractor shall account for in the assigned workday calendar, seasonal weather conditions, and other constraints considered in the planning and scheduling of all work to ensure the completion within the allotted contract time. The schedule shall be of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule. Until such time as the submitted schedule is approved as the official schedule of the project, the Contracting Officer may withhold approval of progress payments.

(b) If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

H.9 Construction Safety Standards -- IBWC (May 2009)

05/01/2009

(a) Offerors shall obtain and review the current Construction Industry "OSHA Safety and Health Standards (29 CFR 1926)" and the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, dated September 15, 2008 (*see Specifications, Division 01 General Requirements, Section 01 39 00 Safety*), prior to submitting offers and preparing required safety program. Offerors shall utilize these standards in preparing required safety programs.

(b) The Contractor shall comply with all pertinent provisions of the U.S. Army Corps of Engineers Safety and

Health Requirements Manual, EM 385-1-1, dated September 15, 2008. This pamphlet is available from: <http://www.usace.army.mil/CESP/Pages/EM385-1-1,28008NEW!.aspx>.

(c) In the event there is a conflict between the requirements contained in OSHA Safety and Health Standards (29 CFR 1926), U.S. Army Corps of Engineers Safety and Health Requirements Manual (EM 385-1-1), specifications paragraphs, Contractor's approved safety program, or referenced safety and health standards, the more stringent requirement will prevail.

H.10 Equipment Ownership and Operating Expense Schedule -- IBWC (May 2009)

05/01/2009

(a) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a Contractor or subcontractor at any tier shall be based on actual cost data when the Government can determine both ownership and operating costs for each piece of equipment or equipment groups of similar serial and series from the Contractor's accounting records. When both ownership and operating costs cannot be determined from the Contractor's accounting records, equipment costs shall be based upon the applicable provisions of EP 1110 1 8, "Construction Equipment Ownership and Operating Expense Schedule," Region VI (available online at [http://140.914.76.129/publications/eng-pamphlets/ep1110-1-8\(vol6\)/toc.htm](http://140.914.76.129/publications/eng-pamphlets/ep1110-1-8(vol6)/toc.htm)). Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the Contracting Officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retrospective pricing, the Schedule in effect at the time for the work was performed shall apply.

(b) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(11) and FAR 31.205 36, substantiated by certified copies of paid invoices. Rates for equipment rented from an organization under common control, lease purchase or sale leaseback arrangements will be determined using the schedule except that rental costs leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated leases are allowable. Costs for major repairs and overhaul are unallowable.

H.11 Cultural Resources -- IBWC (May 2009)

05/01/2009

In accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470), the following procedures are implemented to ensure historic preservation and fair compensation to the Contractor for delays attendant to cultural resources investigations.

In the event potential historical, architectural, archaeological, or cultural resources (herein after cultural resources) are discovered during subsurface excavations at the site of construction, the following procedures shall be instituted:

(1) The Contracting Officer shall issue a "Stop Work Order" directing the Contractor to cease all construction operations at the location of such potential cultural resources find.

(2) Such "Stop Work Order" shall be effective until such time as a qualified archaeologist can be called to assess the value of these potential cultural resources and make recommendations to the State Historical Preservation Officer. Any "Stop Work Order" shall contain the following:

- (a) A clear description of the work to be suspended;
- (b) Any instructions regarding issuance of further orders by the Contractor for material services;
- (c) Guidance as to action to be taken on subcontracts;
- (d) Any suggestions to the Contractor as to minimization of his costs;
- (e) Estimated duration of the temporary suspension.

If the archaeologist determines that the potential find is a bonafide cultural resource, at the direction of the State Historical Preservation Officer, the Contracting Officer shall extend the duration of the "Stop Work Order" in

writing, and the Contractor shall suspend work at the location of the find.

Equitable adjustment of the construction contract shall be made in the following manner:

(1) Time Extension. If the work temporarily suspended is on the "critical path," the total number of days for which the suspension is in effect shall be added to the number of allowable contract days.

If a portion of work at the time of such suspension is not on the "critical path," but subsequently becomes work on the critical path, the allowable contract time will be computed from the date such work is classified as on the critical path.

(2) Additional Compensation. If, as a result of a suspension of the work, the Contractor sustains a loss which could not have been avoided by his judicious handling of forces, equipment, and (plant) or redirection of forces or equipment to perform other work on the contract, there shall be paid to the Contractor an amount as determined by the Contracting Officer to be fair and reasonable compensation for the Contractor's actual loss in accordance with the following:

(a) Idle Time of Equipment. Compensation for equipment idle time will be determined on a force account (time and materials) basis, and shall include the cost of extra moving of equipment and rental loss.

(b) Idle Time of Labor. Compensation for idle time of workers will be determined by the Contracting Officer as "Labor" less any actual productivity factor of this portion of the work force.

(c) Increased Costs of Labor and Materials. Increased costs of labor and materials will be compensated only to the extent such increase was in fact caused by the suspension as determined by the Contracting Officer.

Compensation for actual loss due to idle time of either equipment or labor shall not include markup for profit.

The hours for which compensation will be paid will be the actual normal working time during which such delay condition exists, but will in no case exceed eight hours in any one day.

The days for which compensation will be paid shall be full or partial calendar days, excluding Saturdays, Sundays, and legal holidays, during the existence of such delay.

The State Historical Preservation Officer, Debra Beene, is located at 1511 Colorado, Austin, TX 78701. Ms. Beene may be reached by e-mail at debra.beene@thc.state.tx.us, by telephone at 515-463-5865, or by mail at the Texas Historical Commission, PO Box 12276, Austin, TX 78711-22786. If unable to contact Ms. Beene, the main telephone number is 512-463-6100.

H.12	Work Schedule -- IBWC (May 2009)	05/01/2009
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Normal working hours for the Contractor will be between the hours of **7:00 a.m. and 4:00 p.m.**, Monday through Friday. If the Contractor wishes to work during periods other than that above, additional Government inspection forces will be required. The Contractor shall notify the Contracting Officer's Representative (COR) three (3) days in advance of his desire to work during other periods to allow assignment of additional inspection forces when the Contracting Officer determines that the additional inspection force is reasonably available. If such force is reasonably available, the Contracting Officer may authorize the Contractor to perform work during periods other than normal duty hours/days; however, if inspectors are required to perform in excess of their normal duty hours/days, the actual cost of the overtime inspection at overtime rates will be charged to the Contractor and will be deducted from the final payment of the contract amount.

H.13	Utility and Telephone Services - IBWC (May 2009)	05/01/2009
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The U.S. Section, International Boundary and Water Commission will not provide utility (water, gas and electricity) and telephone services to the Contractor. The Contractor shall, at his own expense and in a competent manner satisfactory to the Contracting Officer, install and maintain all necessary temporary connections and distribution lines, and he shall remove the same prior to final acceptance of the work.

(a) Notwithstanding paragraph (b)(1)(xi) of the Default (Fixed-Price Construction) clause, the Contractor shall not be excused for delays, and shall be liable for any excess costs for failure to perform, if the subcontracted or purchased supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(b) Unusually severe weather, as used in paragraph (b)(1)(xi) of the Default (Fixed-Price Construction) clause of this contract means adverse weather which at the time of the year in which it occurred, was unusual for the place in which it occurred. No matter how severe or destructive, if the weather is not unusual for the particular time and place, or if a Contractor could have reasonably foreseen it, the Contractor is not entitled to an extension in contract time. Climatological records for the Hidalgo Levee Phase I Rehabilitation located in the Lower Rio Grande Flood Control Project (LRGFCP), Mercedes, Hidalgo County, Texas area are available for the Contractor's information at the International Boundary and Water Commission, Headquarters. The Government shall not be responsible for any interpretation or a conclusion drawn from the data or information by the Contractor.

(c) Upon acknowledgment of the Notice to Proceed and continuing throughout the contract on a monthly basis, adverse weather will be recorded on a calendar day basis (including weekends and holidays). The COR will examine these records each month and determine whether the Contractor is entitled to a time extension. Adverse weather must prevent work for 50% or more of the Contractor's work during any workday and delay work critical to the timely completion of the project. The COR will convert any workday delays meeting the above requirements to calendar days and issue a modification in accordance with Contract Clause 52.249-10, entitled Default (Fixed-Price Construction).

(a) This provision specifies the procedures for the determination of time extensions for unusually severe weather in accordance with the Contract Clause 52.249-10, entitled Default (Fixed-Price Construction). The listing below defines the monthly anticipated adverse weather for the contract period and is based on NOAA or similar data for the geographical location of the project:

Monthly Anticipated Adverse Weather Calendar Days

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2	2	1	2	3	4	3	3	5	3	2	2	32

(b) Determination:

(1) The above schedule of anticipated adverse weather will constitute the base line for monthly (or portion thereof) weather time evaluations. Upon acknowledgment of the notice to proceed and continuing throughout the contract on a monthly basis, actual adverse weather days will be recorded on a calendar day basis (including weekends and holidays) and compared to the monthly anticipated weather in subparagraph (a) above. For purposes of subparagraph (b), the term actual adverse weather days shall include days impacted by actual adverse weather days.

(2) The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated in subparagraph (a) above have been incurred, the Contracting Officer will examine any subsequently occurring adverse weather days to determine whether a Contractor is entitled to a time extension. These subsequently occurring adverse weather days must prevent work for 50 percent or more of the Contractor's work day and delay work critical to the timely completion of the project. The Contracting Officer will convert any delays to meeting the above requirements to calendar days and issue a modification in accordance with the Contract Clause: DEFAULT.

(c) The Contractor's schedule must reflect the above anticipated adverse weather delays on all weather dependent activities.

2009)

(a) ***In the event the Government elects to direct a change order or enter into a contract modification*** that increases the scope of work during the course of performance of this contract, allowances for overhead and fee of higher tier subcontractors and the prime contractor shall be subject to the limitations below.

(b) ***Changes and modifications up to \$100,000.00*** (Exclusive of Mark ups)

(1) No subcontractor, vendor or material man, at any level, shall apply markups in excess of 10% overhead and 10% profit on additional contract scope, added by change order or modification, in which all, or substantially all, of the physical work is performed by a lower tier subcontractor subject to the restrictions described below.

(2) In the event that the physical work arising out of a change order is performed by a subcontractor or vendor that is two or more levels below the general contractor, the sum of all markups for overhead and profit for all subcontractors (regardless of the number of tiers of subcontractors), and the general contractor may not exceed 5% of the price, or adjustment in price, to the lower tier subcontract under which the physical work was performed. For example, if, as a result of a change order, the contract price of a fifth tier subcontractor is increased by \$100,000.00, and the work performed by this fifth tier subcontractor constitutes all or substantially all of the work contemplated by this modification or change order, the resulting increase in the price of the prime contract shall not exceed \$105,000.00

(3) Overhead and fee percentages, for the purposes of this provision, shall include insurance (excluding bonds), field and office supervisors and staff (including clerical), home office overhead, field overhead, security, use of small tools, and incidental job site burdens (including office equipment, trailer rental, utilities).

(4) Bond premium adjustments and state and local taxes arising out of changes and modifications directed by the Government shall be subject to a separate allowance independent of the overhead and fee limitations described above.

(5) The fee and overhead limitations described above shall not apply to self performed work by any contractor at any level.

(6) In the event that a modification or change order results in a credit(s) to the Government, the same fee and overhead restrictions shall be applied in calculating the reduction in contract price.

(c) ***Changes and modifications from \$100,001.00 to \$499,999.00*** (Exclusive of Mark ups) Modify paragraphs (1) and (2) above as follows:

(1) No subcontractor or vendor, at any level, shall apply markups in excess of 2.0% overhead and 2.0% profit on additional contract scope, added by change order or modification, in which all, or substantially all, of the physical work is performed by a lower tier subcontractor subject to the restrictions in paragraph (b) above.

(2) In the event that the physical work arising out of a change order is performed by a subcontractor or vendor that is two or more levels below the general contractor, the sum of all markups for overhead and profit for all subcontractors (regardless of the number of tiers of subcontractors), and the general contractor may not exceed 4% of the price, or adjustment in price, to the lower tier subcontract under which the physical work was performed. For example, if, as a result of a change order, the contract price of a fifth tier subcontractor is increased by \$200,000.00, and work performed by this fifth tier subcontractor constitutes all or substantially all of the work contemplated by this modification or change order, the resulting increase in the price of the prime contract shall not exceed \$204,000.00

(d) ***Changes and modifications exceeding \$500,000.00*** (Exclusive of Mark ups) Modify paragraphs (1) and (2) above as follows:

(1) No subcontractor or vendor, at any level including the general contractor, shall apply markups in excess of 1.5% overhead and 1.5% profit on additional contract scope, added by change order or modification, in which all, or substantially all, of the physical work is performed by a lower tier subcontractor subject to the

restrictions described below:

(2) In the event that the physical work arising out of a change order is performed by a subcontractor or vendor that is two or more levels below the general contractor, the sum of all markups for overhead and profit for all subcontractors, regardless of how of the number of tiers of subcontractors, and the general contractor may not exceed 10% of the price, or adjustment in price, to the lower tier subcontract under which the physical work was performed. For example, if, as a result of a change order, the contract price of a second tier (i.e. two tiers below the general contractor) subcontractor is increased by \$600,000.00, and work performed by this second tier subcontractor constitutes all or substantially all of the work contemplated by this modification or change order, the resulting increase in the price of the prime contract shall not exceed \$618,000.00.

(3) The 3% total markup limitation described in paragraphs d(1) and d(2a) above shall not apply shall not apply if sixty percent (60%) or more of the cost of the physical work contemplated by a change order or modification is performed by a subcontractor or vendor that is three or more levels below the General Contractor. In this event, the total markup limitation shall not exceed 2%. The limitations on the markup of individual subcontractors, vendors or the general contractor described in paragraph d (1) remains unchanged. For example, if, as a result of a change order, the contract price of a fifth tier subcontractor is increased by \$600,000.00, and work performed by this fifth tier subcontractor constitutes sixty percent or more of the work contemplated by this modification or change order, the resulting increase in the price of the prime contract shall not exceed \$612,000.00.

(e) *Additional Clarification Regarding Multi-Part Changes*

In the event that the physical work arising out of a change order or contract modification is performed by two or more firms, the value of the change for the purposes of this provision shall be based on the cumulative value of the physical work performed by all subcontractors and vendors. For example, if as a result of a change order or contract modification, the fourth and fifth tier subcontractors perform work with a negotiated value of eighty thousand dollars (\$80,000) and twenty five thousand dollars (\$25,000) respectively, the cumulative value of the change is one hundred five thousand dollars (\$105,000.00). Therefore, the change falls into the second category, \$100,001.00 to \$499,999.00, and the sum of all markups for overhead and profit may not exceed 4% and the resulting increase in the price of the prime contract shall not exceed one hundred twenty six thousand dollars (\$105,000 x 1.04).

Section I - Contract Clauses

Clauses By Reference

Clause	Title	Date
52.202-1	Definitions (July 2004)	07/19/2004
52.203-3	Gratuities (Apr 1984)	04/01/1984
52.203-5	Covenant Against Contingent Fees (Apr 1984)	04/01/1984
52.203-7	Anti-Kickback Procedures (Jul 1995)	07/01/1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)	01/01/1997
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity (Jan 1997)	01/01/1997
52.203-12	Limitation On Payments To Influence Certain Federal Transactions (Sept 2007)	09/17/2007
52.203-13	Contractor Code of Business Ethics and Conduct (Dec 2008)	12/12/2008
52.203-14	Display of Hotline Poster(s) (Dec 2007) DHS OIG Hotline Poster:: Office of the Inspector General Fraud Detection Office, Attn: Poster Request, 1300 N 17th St, Suite 3200, Arlington, VA 22209; Online at: Department of Homeland Security (DHS) fraud hotline poster ; State Department Poster:: http://oig.state.gov/hotline/14846.htm ;	12/24/2007
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)	03/31/2009
52.204-4	Printed or Copied Double-Sided on Recycled Paper (Aug 2000)	08/07/2000
52.204-7	Central Contractor Registration (Apr 2008)	04/22/2008
52.204-11	American Recovery and Reinvestment Act--Reporting Requirements (Mar 2009)	03/31/2009
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (Sept 2006)	09/28/2006
52.214-26 Alt I	Audit and Records--Sealed Bidding (Mar 2009) Alt I (Mar 2009)	03/31/2009
52.214-27	Price Reduction for Defective Cost or Pricing Data - Modifications - Sealed Bidding (Oct 1997)	10/01/1997
52.214-28	Subcontracting Cost or Pricing Data--Modifications--Sealed Bidding (Oct 1997)	10/01/1997
52.214-29	Order of Precedence--Sealed Bidding (Jan 1986)	01/01/1986
52.215-2	Audit and Records--Negotiation (Mar 2009)	03/31/2009
52.215-11	Price Reduction for Defective Cost or Pricing Data--Modifications (Oct 1997)	10/01/1997
52.215-13	Subcontractor Cost or Pricing Data--Modifications (Oct 1997)	10/01/1997

Clause	Title	Date
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications (Oct 1997)	10/01/1997
52.219-8	Utilization of Small Business Concerns (May 2004)	05/05/2004
52.219-9 Alt I	Small Business Subcontracting Plan (Nov 2007)- Alternate I (Oct 2001)	10/22/2001
52.219-16	Liquidated Damages-Subcontracting Plan (Jan 1999)	01/04/1999
52.219-28	Post-Award Small Business Program Rerepresentation (Apr 2009)	04/20/2009
52.222-3	Convict Labor (June 2003)	06/01/2003
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation (July 2005)	07/08/2005
52.222-6	Davis Bacon Act (July 2005)	07/08/2005
52.222-7	Withholding of Funds (Feb 1988)	02/01/1988
52.222-8	Payrolls and Basic Records (Feb 1988)	02/01/1988
52.222-9	Apprentices and Trainees (July 2005)	07/08/2005
52.222-10	Compliance with Copeland Act Requirements (Feb 1988)	02/01/1988
52.222-11	Subcontracts (Labor Standards) (July 2005)	07/08/2005
52.222-12	Contract Termination-Debarment (Feb 1988)	02/01/1988
52.222-13	Compliance with Davis-Bacon and Related Act Regulations (Feb 1988)	02/01/1988
52.222-14	Disputes Concerning Labor Standards (Feb 1988)	02/01/1988
52.222-15	Certification of Eligibility (Feb 1988)	02/01/1988
52.222-21	Prohibition of Segregated Facilities (Feb 1999)	02/16/1999
52.222-26	Equal Opportunity (Mar 2007)	03/22/2007
52.222-27	Affirmative Action Compliance Requirements for Construction (Feb 1999)	02/16/1999
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (Sept 2006)	09/28/2006
52.222-36	Affirmative Action for Workers with Disabilities (June 1998)	06/22/1998
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)	09/28/2006
52.222-50	Combating Trafficking in Persons (Feb 2009)	02/17/2009
52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts. (Dec 2007)	12/07/2007

Clause	Title	Date
52.223-5	Pollution Prevention and Right-to-Know Information (Aug 2003)	08/01/2003
52.223-5 Alt II	Pollution Prevention and Right-to-Know Information (Aug 2003)- Alternate II (Aug 2003)	08/25/2003
52.223-6	Drug Free Workplace (May 2001)	05/11/2001
52.223-14	Toxic Chemical Release Reporting	08/01/2003
52.225-13	Restrictions on Certain Foreign Purchases (June 2008)	06/12/2008
52.227-1	Authorization and Consent (Dec 2007)	12/07/2007
52.228-2	Additional Bond Security (Oct 1997)	10/01/1997
52.228-5	Insurance - Work on a Government Installation (Jan 1997)	01/01/1997
52.228-11	Pledges of Assets (Feb 1992)	02/01/1992
52.228-12	Prospective Subcontractor Requests for Bonds (Oct 1995)	10/01/1995
52.228-14	Irrevocable Letter of Credit (Dec 1999)	12/27/1999
52.228-15	Performance and Payment Bonds--Construction (Nov 2006)	11/22/2006
52.229-3	Federal, State and Local Taxes (Apr 2003)	04/17/2003
52.232-5	Payments under Fixed-Price Construction Contracts (Sept 2002)	09/30/2002
52.232-17	Interest (Oct 2008)	10/17/2008
52.232-27	Prompt Payment for Construction Contracts (Oct 2008)	10/17/2008
52.232-33	Payment by Electronic Funds Transfer--Central Contractor Registration (Oct 2003)	10/01/2003
52.233-1	Disputes (July 2002)	07/29/2002
52.233-3	Protest after Award (Aug 1996)	08/01/1996
52.233-4	Applicable Law for Breach of Contract Claim (Oct 2004)	10/01/2004
52.236-1	Performance of Work by the Contractor (Apr 1984)	04/01/1984
52.236-2	Differing Site Conditions (Apr 1984)	04/01/1984
52.236-3	Site Investigation and Conditions Affecting the Work (Apr 1984)	04/01/1984
52.236-5	Material and Workmanship (Apr 1984)	04/01/1984
52.236-6	Superintendence by the Contractor (Apr 1984)	04/01/1984
52.236-7	Permits and Responsibilities (Nov 1991)	11/01/1991
52.236-8	Other Contracts (Apr 1984)	04/01/1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984)	04/01/1984

Clause	Title	Date
52.236-10	Operations and Storage Areas (Apr 1984)	04/01/1984
52.236-11	Use and Possession Prior to Completion (Apr 1984)	04/01/1984
52.236-12	Cleaning Up (Apr 1984)	04/01/1984
52.236-13 Alt I	Accident Prevention (Nov 1991)- Alternate I (Nov 1991)	11/01/1991
52.236-15	Schedules for Construction Contracts (Apr 1984)	04/01/1984
52.236-16	Quantity Surveys (Apr 1984)	04/01/1984
52.236-17	Layout of Work (Apr 1984)	04/01/1984
52.236-21 Alt I	Specifications and Drawings for Construction (Feb 1997)- Alternate I (Apr 1984)	04/01/1984
52.236-26	Preconstruction Conference (Feb 1995)	02/01/1995
52.242-13	Bankruptcy (July 1995)	07/01/1995
52.243-4	Changes (June 2007)	06/14/2007
52.248-3	Value Engineering--Construction (Sept 2006)	09/28/2006
52.249-2	Termination for Convenience of the Government (Fixed-Price) (May 2004)	04/01/2004
52.249-10	Default (Fixed-Price Construction) (Apr 1984)	04/01/1984
52.253-1	Computer Generated Forms (Jan 1991)	01/01/1991

I.1 52.252-2 Clauses Incorporated By Reference (Feb 1998) 02/01/1998

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://www.arnet.gov/far>

I.2 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) 12/01/2004

(a) **Definition.** As used in this clause—

“**United States**” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) **Except as provided** in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or

grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to—

- (1) Contractors and subcontractors that employ fewer than 15 persons;
- (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
- (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
- (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—
 - (i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and
 - (ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or
- (5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—

- (1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
- (2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>;
or
- (3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(a) Definitions. As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to **the address shown in G.2 in Section G.**

I.4 52.225-21 Required Use of American Iron, Steel, and Other Manufactured Goods--Buy
American Act--Construction Materials (Mar 2009)

03/01/2009

(a) **Definitions.** As used in this clause—

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) **Domestic preference.**

(1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

“None”.

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Cost Comparison

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

(a) **Definitions.** As used in this clause—

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free trade agreement (FTA) country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of an FTA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Recovery Act designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);
- (2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Recovery Act designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) **Construction materials.**

- (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery

Act) and the Buy American Act (41 U.S.C. 10a–10d) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: “None.”

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed

supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Cost Comparison

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

I.6 52.252-4 Alterations in Contract (Apr 1984) 04/01/1984

Portions of this contract are altered as follows: **See I.7 52.246-12 Warranty of Construction (Mar 1994) ALTERATION.**

I.7 52.246-12 Warranty of Construction (Mar 1994) [Alteration] 08/17/2009

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) **This warranty for all mechanically operated equipment (Division 60 68 00 of the specifications referenced in Section J, item J.12)** shall continue for a period of five (5) years from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of five (5) years from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of—

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall **restore** any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for the remaining unexpired portion of the five (5) year warranty from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

Section J - List of Attachments

J.1	Department of Labor General Wage Decision TX 080029	08/27/2009
	one (1) page, two (2) sided	
J.2	IBWC Form 117, Statement of Attendance at Pre-Bid Conference and Site Inspection	08/17/2009
	one (1) page	
J.3	IBWC Form 110, Certification of Authority for Signing Bids/Contracts	08/17/2009
	one (1) page	
J.4	IBWC 116, Statement of Equipment	08/17/2009
	one (1) page	
J.5	SF 24 Bid Bond	10/01/1998
	one (1) page, two (2) sided	
J.6	SF 25 Performance Bond	05/01/1996
	one (1) page, two (2) sided	
J.7	SF 25A Payment Bond	10/01/1998
	one (1) page, two (2) sided	
J.8	SF 28 Affidavit of Individual Surety	06/01/2008
	one (1) page, two (2) sided	
J.9	IBWC Form 105, Certificate of Insurance	06/26/2009
	one (1) page	
J.10	IBWC Form 108 Release on Contract	07/01/2002
	one (1) page, two (2) sided	
J.11	SF 1413 Statement and Acknowledgment	07/01/2005
	one (1) page	
J.12	Specifications	08/17/2009
	approximately 400 pages	
J.13	Plans	08/17/2009
	Rehabilitation of North Floodway, North and South Levees (NF 1), from FM 1015 to Baseline Road, approximately 500 sheets.	

Rehabilitation of Arroyo Colorado, North Levee (AC 1), from FM 1015 to Willacy Canal, approximately 300 sheets.

Rehabilitation of Arroyo Colorado, North Levee (AC2), from wiWillacy Canal to White Ranch Road, approximately 200 sheets.

J.14 Geotechnical Memorandum 08/17/2009

three (3) volumes

Section K - Representations, Certifications, and Other Statements of Offerors or Respondents**Clauses By Reference**

Clause	Title	Date
52.204-8	Annual Representations and Certifications (Feb 2009)	02/17/2009

K.1 52.252.01 Solicitation Provisions Incorporated by Reference (Feb 1998) 02/01/1998

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far>.

K.2 52.219-02 Equal Low Bids (Oct 1995) 10/01/1995

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

K.3 52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan--Certification (Aug 2009) 08/01/2009

(a) **Definitions.** As used in this provision—

“Business operations” means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

“Marginalized populations of Sudan” means—

- (1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) ([50 U.S.C. 1701 note](#)); and
- (2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
 - (3) Consist of providing goods or services to marginalized populations of Sudan;
 - (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
 - (5) Consist of providing goods or services that are used only to promote health or education; or
 - (6) Have been voluntarily suspended.
- (b) Certification.** By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

K.4	52.225-22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials (Mar 2009)	03/01/2009
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(a) Definitions. “*Construction material*,” “*domestic construction material*,” “*foreign construction material*,” “*manufactured construction material*,” “*steel*,” and “*unmanufactured construction material*,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-21).

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-21 in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

- (i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and
- (ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-21, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-21 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-21 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

Section L - Instructions, Conditions, and Notices to Offerors and Respondents

Clauses By Reference

Clause	Title	Date
52.214-3	Amendments to Invitations for Bids (Dec 1989)	12/01/1989
52.214-4	False Statements in Bids (Apr 1984)	04/01/1984
52.214-5	Submission of Bids (Mar 1997)	03/01/1997
52.214-6	Explanation to Prospective Bidders (Apr 1984)	04/01/1984
52.214-7	Late Submissions, Modifications, and Withdrawals of Bids (Nov 1999)	11/23/1999
52.214-18	Preparation of Bids-Construction (Apr 1984)	04/01/1984
52.214-19	Contract Award-Sealed Bidding-Construction (Aug 1996)	08/01/1996
52.214-34	Submission of Offers in the English Language (Apr 1991)	04/01/1991
52.214-35	Submission of Offers in U.S. Currency (Apr 1991)	04/01/1991
52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (Feb 1999) 72.8%; 6.9%; N/A; N/A; N/A; N/A; Cameron and Hidalgo Counties, Texas;	02/16/1999

L.1 52.252-01 Solicitation Provisions Incorporated by Reference (Feb 1998) 02/01/1998

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far>.

L.2 52.211-03 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions (Jun 1988) 06/01/1998

The specifications cited in this solicitation may be obtained from:

Division 1, General Requirements, Section 01 42 00 Specification References

The request should identify the solicitation number and the specification requested by date, title, and number, as cited in the solicitation.

L.3 52.216-01 Type of Contract (Apr 1984) 04/01/1984

The Government contemplates award of a **firm fixed-price construction** contract resulting from this solicitation.

L.4 52.225-22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials (Mar 2009) 03/01/2009

(a) **Definitions.** “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured

construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-21).

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-21 in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-21, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-21 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-21 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

L.5 52.233-02 Service of Protest (Sep 2006) 09/01/2006

(a) Protests, as defined in section 31.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from the address shown in item G.2 in Section G.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

L.6 52.236-27 Site Visit (Construction) (Feb 1995) - Alternate I (Feb 1995) 02/01/1995

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) An organized site visit has been scheduled for— Wednesday, August 26, 2009 at 8:00 a.m. CDT.

(c) Participants will meet at—The USIBWC Field Office, 325 Gulf Course Road, Mercedes, TX 78570-9677.

L.7 Pre-Bid Conference -- IBWC (May 2009) 05/01/2009

(a) All potential bidders are required to attend a Pre-Bid Conference to be held at the **USIBWC Field Office, 325 Golf Course Road, Mercedes, TX 78570 on Wednesday, August 26, 2009 at 8:30 a.m. Call 956-565-3150 if lost and in need of directions.**

(b) Names of individuals who plant to attend must be furnished on or before **August 25, 2009** by e-mail, mail, telefax, or telephone **as shown in Section G, under Item G.2.**

(c) Due to time, distance, and cost associated with the Pre-Bid Conference, prospective bidders who fail to attend on the scheduled date will not be given a further opportunity to do so.

(d) The purpose of the conference is to provide prospective bidders, subcontractors and suppliers, an opportunity to observe and evaluate project conditions; to present questions in writing, in advance, to the mailing address listed above, referencing the solicitation number IFB **IBM09B0004**. Answers will be prepared and discussed during a questions and answer period at the conference **for any written questions received no later than noon MDT on Monday, August 24, 2009**. Questions following the site visit and conference should be submitted to arrive at the aforementioned address not later than **August 28, 2009**.

(f) While every effort will be made to provide meaningful responses or clarifications to all inquiries, no answer shall be binding by the Government unless submitted in writing and subsequently answered by means of a formal amendment to this solicitation.

L.8 Qualifications of Bidders -- IBWC (May 2009) 05/01/2009

Each bidder shall furnish with his bid a Statement of Equipment (See Attachment J. 8 in Section J) and a Statement of Construction Experience and Financial Condition setting forth the following information:

1. Location and description of the Bidder's permanent place of business.
2. List of similar projects, with contract amounts, completed by the Bidder.
3. List of work Bidder currently has under contract.
4. For items 2 and 3 above, Bidder shall include the names and current telephone numbers of individuals employed by the owner of the project who can provide information regarding the quality, timeliness and financial aspects of the project.
5. Recent financial statement.
6. Any additional information required to show that the Bidder is adequately prepared to fulfill the contract.

The Bidder's statement shall be submitted in a separately sealed envelope enclosed in the sealed envelope containing the bid. The envelope containing the Bidders' statement shall be plainly marked as follows:

Statement of Qualifications of _____.

(Name of Bidder)

The statement will be returned to the Bidder unopened unless it is necessary to open the envelope for the purpose of determining the award. The statement submitted by the successful Bidder will be retained. Failure to enclose the Bidder's statement with the bid may constitute basis for the rejection of the bid.

L.9 Bid Guarantee -- IBWC (May 2009) 05/01/2009

(a) **Bid Guarantee.** For bids that exceed \$100,000, the bidder shall furnish a guarantee, assuring that the bidder (1) will not withdraw a bid within the period specified for acceptance and (2) will execute a written contract and furnish required bonds and insurance agreement within the period specified therefore, in an amount of not less than 20 percent of the bid price or three million dollars (\$3,000,000) whichever is lesser. The bid guarantee penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents.

(b) **Corporations executing bonds** as sureties on Federal contracts must appear on the list contained in the Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" and must act within the limitation listed therein.

(c) **Requirements for executive of surety bonds.** Each surety company bond (bid, performance, or payment), that purports to have been executed by an agent or attorney-in-fact for the corporate surety, is required to have submitted with it a power of attorney to the signatory agent or attorney-in-fact, and (1) be executed by the corporate surety upon a reasonable proximate to the date of the bond, or (2) the power of attorney shall be accompanied by a certification of the surety to the effect that the power of attorney was in full force and effect upon a date reasonably proximate to the date of the bond.

(d) **Individual Sureties.**

(1) If individual surety bonds are furnished either for bid guarantee or for payment and performance bonds, the individual sureties must submit with their bonds proof of ownership and value of the assets which they claim in their net worth. The Government's preferred method of proof is to have a statement of net worth prepared by a certified public accountant in accordance with generally accepted accounting principles. The statement of net worth on the SF-23, Affidavit of Individual Surety, is not in itself

sufficient and will not be accepted absent of additional proof of value and ownership.

(2) Bidders are also cautioned that individual sureties must provide complete and detailed information in block 10 of the SF-28 concerning other contracts on which they have provided bonds. This information should include contract number, contract location, amount and type of bond and telephone number of the involved contracting officer.

(3) Failure to provide the proof and information requested above will cause delays to the start of the construction for which the contractor must bear the responsibility, and may result in rejection of a bid or termination of contract for failure to provide adequate bonds.

Failure to include bid guarantee or other bid security with your bid may be cause for rejection of the bid. Late submission of the bid guarantee or the security shall be treated in the same manner as late bids.

Section M - Evaluation Factors for Award

Clauses By Reference

Clause	Title	Date
52.217-5	Evaluation of Options (July 1990)	07/01/1990

M.1 52-252-01 Solicitation Provisions Incorporated by Reference (Feb 1998) 02/01/1998

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far>.

M.2 Award 08/17/2009

Award will be made in accordance with the Federal Acquisition Regulation (FAR) provision 52.214-19, entitled Contract Award-Sealed Bidding—Construction, incorporated by reference in this Section L, under Item L.1. However, as provided in 52.217-5 Evaluation of Options, incorporated by reference in this Section M, under Item M.1, the Rehabilitation of the Arroyo Colorado Nother Levee (AC 2), from Willacy Canal to White Ranch Road, will also be considered in the evaluation.